scale instead of a lower scale basis. To this proposition I cannot assent. Lawyers, like doctors, by the etiquette of their professions, are expected to do their best for any client whom they are advising, irrespective of the fee that may ultimately be paid. Under no circumstances can a counterclaim on the higher scale basis transform a lower scale claim into a higher scale claim. The apportionment of two-thirds to the claim and one-third to the counterclaim is certainly not open to objection on the Plaintiff's part, and the plaintiff could not reasonably have complained if even a larger proportion had been allocated to the claim and a smaller proportion to the counterclaim. In my view therefore the basis upon which the hearing fees were calculated was correct.

A further point arises as to what is meant by "a day" (item 189 in schedule C). I have always understood that "a day" covers the normal sittings of the Court, i.e. from 10.30 or 11 a.m. to 4 p.m. If this period is exceeded by less than half an hour no extra payment should be allowed upon the principle "de minimis non curat lex." When, however, the usual period is substantially exceeded, I think that an extra allowance per hour can be made in proportion to the rate of the daily fee allowed. The bill of costs should therefore be referred back so that the necessary adjustment may be made.

The only other question is whether the plaintiff being entitled under the Order of the Court of Appeal to half his taxed costs, is to be allowed half his profit costs and his full disbursements. This is merely a matter of interpretation of the order of the Court of Appeal. I feel no doubt that "costs" generally includes disbursements, and that under the Order in question the plaintiff is only entitled to half the disbursements allowed.

Order accordingly.

Solicitor for Plaintiff—*Mark Morrison.*
Solicitors for Defendant—*Braddell Bros.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

April 21, 1938.

RE E. M. ABDULLA AND COMPANY.

EX PARTE HENRY WAUGH AND CO.

[SINGAPORE BANKRUPTCY No. 7 of 1938]

Bankruptcy Ordinance (Cap. 45), s. 3 sub-s. 3—"Debtor"—Adjudication of absent principal

An act of bankruptcy must be a personal act or default of the debtor, and cannot be committed through an agent of the person sought to be made bankrupt if such person is not cognizant of or has not authorised the said act. An adjudication order cannot be made against an absent principal in respect of an act of bankruptcy committed by an agent within the Colony of which the principal is not cognizant and which he has not authorised.

Re Chop Ghee Lee, Singapore Bankruptcy No. 362 of 1923, unreported and *re Chop Nam Chiang Long*, (1927) S.S.L.R. 28 followed. *Ex parte Blain*, 12 Ch. D. 522 followed.

MOTION.

Barrett for the petitioning creditors in support of the Motion.

E. B. Williams, Official Assignee, in person.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

McELWAINE, C.J.—This is an application for adjudication orders against E. M. Abdulla and E. M. Abdul Hamid, two of the three partners in the firm of E. M. Abdulla & Company of No. 161 North Bridge Road, Singapore, against which firm I made a receiving order on 4th February, 1938, on the ground that the following act of bankruptcy appeared to have been committed: "that the managing partner of the said E. M. Abdulla & Co. with the intent to delay the creditors of E. M. Abdulla & Company, (1) has departed from his dwelling house (2) has absented himself from his place of business of E. M. Abdulla & Company."

The managing partner above referred to is E. K. Mohamed Ismail whose whereabouts are unknown.

The firm was indebted to Henry Waugh & Company in the sum of $1,056.02

In an affidavit sworn by J. M. Mohamed Sultan, an employee of the firm, it was sworn that the said E. M. Abdulla and E. M. Abdul Hamed are at present living in India, having authorised their partner E. K Mohamed Ismail to manage and conduct their business at Singapore, and that the firm have many creditors and were sometimes unable to pay their debts in full, under such circumstances the said E. K. Mohamed Ismail has disappeared.

There is no evidence that either of the partners E. M. Abdulla or E. M. Abdul Hamid have been in Singapore for some years prior to the act of bankruptcy, or for that matter whether they have ever been here.

The question for determination is, are these two partners debtors who have committed an act of bankruptcy upon which adjudication orders can be made against them?

The Bankruptcy Ordinance (Chapter 45) section 3 (3) so far as material enacts:

> "The word 'debtor' in this section shall be deemed to include any person, whether a British subject or not,
>
> (c) who though not himself personally within the Colony carries on business by an agent within the Colony."

As a partner he is the agent of his partners for the purpose of the business of the partnership

E. M. Abdulla and E. M. Abdul Hamid. though not in the Colony, carried on business by an agent within the Colony and are therefore

debtors: *In re Debtors*, (1936) 1 Ch., at p. 63. The point then arises, have these two debtors committed the act of bankruptcy upon which this application is founded?

> "One of the conditions and limitations on the exercise of bankruptcy jurisdiction against a foreigner domiciled and resident abroad is that the act relied on as an act of bankruptcy must have been done by the bankrupt within the jurisdiction."

per Lord Davey in *Cooke* v. *Charles A. Vogeler & Company*, (1901) A.C., at 114.

It was held in *Re Sawers, Ex parte Blain*, 12 Ch. D., 522 that an act of bankruptcy must be the personal act or the personal default of the person who is to be made bankrupt. "I think," said Brett L.J. "that a man cannot commit an act of bankruptcy by a particular act of his agent which he has not authorised and of which act he has had no cognizance."

Ex parte Blain was under the Act of 1869 and *Vogeler's case* was under the Act of 1883 neither of which defined "debtor" as it is defined in section 1(2) of the Act of 1914 which is very similar to the Colony definition above set out, but the alteration of the definition of debtor to include a person who carries on business through an agent does not make it necessarily follow that the act of bankruptcy of the agent is the act of bankruptcy of the principal. Some of the statutory acts of bankruptcy are positive frauds and it seems to me wrong to suppose that the fraud of an agent is so within the scope of his authority as to be the act of his principal for the purpose of altering the status of that principal though the fraud was committed without the knowledge of, or against the will of the principal, even if the principal might be civilly liable for it. *Lloyd* v. *Grace, Smith & Co.*, (1912) A.C., 716. That is the view taken in 2 *Halsbury* (*Hailsham's Edition*) para. 22 "An act of bankruptcy, the essence of which lies in the intention of the debtor at the time when he did the act or suffered it to be done must be a personal act or default, and, notwithstanding the extended meaning of the expression 'a debtor,' it would appear that an act of bankruptcy cannot be committed through an agent of the person sought to be made bankrupt if such person is not cognisant of or has not authorised the said act."

See too 1 *Halsbury* (*Hailsham's Edition*) Para. 452 note (a) and *Boustead* on Agency 8th Ed. top of p. 284. To the same effect is *Williams* on Bankruptcy, 15th Edition, p. 40. It "appears to be still the law, that the act of bankruptcy must be a personal act or default, and could not be committed by the act of an agent which the debtor had not authorised or of which he had no cognizance." To the same effect is *Re Chop Ghee Lee*, No. 362 of 1923 (unreported) to which I shall refer later.

There may be other acts of bankruptcy committed by an agent which it can be more easily assumed to be done with the cognizance and authority of the principal.

The act of bankruptcy here complained of was a very personal act of the managing partner in Singapore. There is nothing to indicate that the two partners in India authorised, approved or even knew of the manager's intention to depart from his dwelling or to absent himself from his place of business, and for the reasons I have given, the two partners in India cannot be deemed to have absconded through their managing partner and cannot be made bankrupt by reason only of the act of bankruptcy of the managing partner.

I was referred to the unreported judgment of Barrett-Lennard, J. in Bankruptcy No. 362 of 1923, *Re Chop Ghee Lee*. So far as that learned Judge's judgment was based upon his finding "They are not shewn to have authorised, or to have had any cognizance of, the act of bankruptcy" his refusal to adjudicate partners who had left the Colony three years before was in my opinion right.

There are passages in his judgment which seem to suggest that portions of the Bankruptcy Ordinance are *ultra vires*. "It seems to me," he says, "that the enactment does purport to reach persons whose act or omissions take place outside the territory of the Straits Settlements and who are not domiciled within them." He proceeded to quote Article 8 of the Letters Patent of 1911 constituting the Legislative Council and then referred to the well-known case of *Macleod* v. *Attorney-General of New South Wales*, (1891) A.C. 455 which decided that the legislature of a Crown Colony has no jurisdiction to legislate for matters happening outside its territory.

But with all due respect these comments miss the mark. Lord Davey in *Vogeler's case* (*supra*) referring to *Ex parte Crispin*, L.R., 8 Ch., 374 said "It was there laid down that a foreigner trading in England is subject to the bankruptcy law, but that it is the act of bankruptcy which gives the court jurisdiction, and that in the case of a foreigner that act of bankruptcy must be committed in this country or be an act intended to operate according to the law of this country."

There is nothing at variance with this principle in the Bankruptcy Ordinance. The act of bankruptcy must be committed here or be intended to operate under the law of the Colony. In the case before Barrett-Lennard J. the act of bankruptcy took place in the Colony.

Had it been shewn that the absent partner authorised that act he would have done that act in the Colony through his agent.

A person can commit a crime in a country in which he has never been as where a partner in England authorised his partners in Switzerland to make fraudulent representations in order to get goods in that country. *Rex* v. *Godfrey*, (1923) 1 K.B., 24, and I see no reason why he

cannot commit an act of bankruptcy in the Colony through an agent, if he wishes to do so, though the principal is out of the jurisdiction.

There is another principle laid down in *Macleod's case (supra)* and that is that if the legislation of a Crown Colony can be given an interpretation that makes it *intra vires* the colonial legislature, that is the interpretation which must be placed upon it.

I therefore do not share the doubts which Barrett-Lennard J. appears to have entertained about the validity of part of the Bankruptcy Ordinance.

The decision of Barrett-Lennard J. was "followed by courtesy, but not by conviction" by Sir William Murison C. J. in *Re Chop Nam Chiang Long (Tew Teng Choon, proprietor)*; *ex parte the Official Assignee*, (1927) S.S.L.R. 28. Murison, C.J.'s own view was that the provision of the "Ordinance allowing the adjudication of a bankrupt resident and domiciled in China who has carried on business by an attorney with full powers, is not *ultra vires*," but he seems also to have been of opinion that any act of bankruptcy of an agent is an act of bankruptcy done by the absent principal because he regards *ex parte Blain (supra)* as being nullified by the Act of 1914. That is the argument upon which the appellant in *Re Debtors (supra)* tried to get rid of *Vogeler's case (supra)*, but as I understand *Re Debtors (supra)* the only difference effected by the change in the law is to make a person a "debtor" who was not one before the Act of 1914 and that it did not affect acts of bankruptcy.

The principle enuniciated by Brett L.J. (as he then was) in *Ex parte Blain (supra)* that the act of bankruptcy of an agent—in that case the act of some English partners—is not to be deemed the act of bankruptcy of a partner who has not authorised it, is not affected by the newer legislation.

The question is one of agency and Brett L.J. was clearly of opinion that agency without authorisation or cognizance is insufficient to impute an act of bankruptcy to another partner or to a principal.

Had it been shewn that E. M. Abdulla and E. M. Abdul Hamid authorised or approved the act of bankruptcy committed by their partner in Singapore, I would have adjudicated them for an act of bankruptcy committed by them within the jurisdiction although they were at all material times outside the jurisdiction; but there being nothing to shew that the very personal act of the managing partner in absconding was authorised or approved by the partners in India I am, for the reasons I have given, of opinion that they in India have not departed from their dwelling house in Singapore (a dwelling in which they did not dwell) or absented themselves from their place of business in Singapore (in which they were at no material time present) with intent to delay or defeat their creditors, just because their managing partner did these acts.

I therefore dismiss the motion.

Motion dismissed.

Solicitors for the petitioning creditors—*Barrett & Co.*

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
April 28, 1938.

REX v. NG CHIM POH.

[SINGAPORE SPECIAL CASE No. 2 of 1938]

Liquor Revenue Ordinance (Cap. 225), s. 38, sub-s. 1 — Liquor Licensing Rules 1937, — Rule 57—Selling beer by retail for consumption off the licensed premises.

A licence in the usual form only professes to deal with the consumption of liquor on the licensed premises. Where as in the case of beer, no license is required for sale off the premises, there is no prohibition in the licence itself.

Rule 57 of the Licensing Rules 1937, which absolutely prohibits the holder of a liquor shop license from exposing for sale any intoxicating liquors whatever other than Chinese liquors, is inconsistent with the express provisions of s. 38, sub-s. 1 of the Liquors Revenue Ordinance and is accordingly *ultra vires*.

SPECIAL CASE STATED.

Demuth for appellant.

Worley for the Crown.

The facts and arguments appear sufficiently from the Judgment.

Cur. Adv. Vult.

TERRELL, J.—The accused was charged before the 4th Magistrate, Singapore, with an offence under Rule 57 of the Liquor Licensing Rules, 1937. The actual charge was as follows:—

> That he, being the licensee of liquor shop at No. 10 Joo Chiat Road, on 13-1-38 did sell an article other than Chinese liquor or non-intoxicating liquors, to wit, one unopened pint bottle of Tiger beer, an offence against Rule 57 of the Liquor Licensing Rules, 1937, and punishable under section 77 of the Liquors Revenue Ordinance.

The sections of the Ordinance (No. 225) which are relevant are as follows:—

> 38.—(1) No person shall sell by retail or offer for sale by retail, or permit to be so sold or offered, or have in his possession for sale by retail any intoxicating liquors or toddy, except under and in accordance with a licence in that behalf issued under this Ordinance and in a place in such licence specified, provided that the sale of ale or beer or stout or porter in unopened reputed quart bottles or reputed pint bottles or reputed half-pint bottles, for consumption elsewhere than on the premises of the vendor, shall not constitute an offence under this section.